

§ 7A-451. Scope of entitlement.

(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

- (1) Any case in which imprisonment, or a fine of five hundred dollars (\$500.00), or more, is likely to be adjudged.
- (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes.
- (3) A motion for appropriate relief under Chapter 15A of the General Statutes if appointment of counsel is authorized by Chapter 15A of the General Statutes and the defendant has been convicted of a felony, has been fined five hundred dollars (\$500.00) or more, or has been sentenced to a term of imprisonment.
- (4) A hearing for revocation of probation.
- (5) A hearing in which extradition to another state is sought.
- (6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.
- (7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes.
- (8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible.
- (9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes.
- (10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.
- (11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes.
- (12) In the case of a juvenile alleged to be abused, neglected, or dependent under Subchapter I of Chapter 7B of the General Statutes.
- (13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes.
- (14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101.
- (15) An action brought pursuant to Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.
- (16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.
- (17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145.
- (18) A proceeding involving placement into satellite monitoring under Part 5 of Article 27A of Chapter 14 of the General Statutes.

(b) In each of the actions and proceedings enumerated in subsection (a) of this section, entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process.

Entitlement continues through any critical stage of the action or proceeding, including, if applicable:

- (1) An in-custody interrogation;
- (2) A pretrial identification procedure which occurs after formal charges have been preferred and at which the presence of the indigent is required;
- (3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;
- (4) A probable cause hearing;
- (5) Trial and sentencing;
- (6) Review of any judgment or decree pursuant to G.S. 7A-27, 7A-30(1), 7A-30(2), and Subchapter XIV of Chapter 15A of the General Statutes;
- (7) In a capital case in which a defendant is under a sentence of death, subject to rules adopted by the Office of Indigent Defense Services, review of any judgment or decree rendered on direct appeal by the Supreme Court of North Carolina pursuant to the certiorari jurisdiction of the United States Supreme Court; and
- (8) In a noncapital case, subject to rules adopted by the Office of Indigent Defense Services, review of any judgment or decree rendered on direct appeal by a court of the North Carolina Appellate Division pursuant to the certiorari jurisdiction of the United States Supreme Court, when the judgment or decree:
 - a. Decides an important question of federal law in a way that conflicts with relevant decisions of the United States Supreme Court, a federal Court of Appeals, or the court of last resort of another state;
 - b. Decides an important question of federal law that has not been, but should be, settled by the United States Supreme Court; or
 - c. Decides a question of federal law in the indigent's favor and the judgment or decree is challenged by opposing counsel through an attempt to invoke the certiorari jurisdiction of the United States Supreme Court.

(c) In any capital case, an indigent defendant who is under a sentence of death and desires counsel may apply to the Office of Indigent Defense Services for the appointment of counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The application for the appointment of such postconviction counsel may be made prior to completion of review on direct appeal and shall be made no later than 10 days from the latest of the following:

- (1) The mandate has been issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;
- (2) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina; or
- (3) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina, but subsequently left the defendant's death sentence undisturbed.

(c1) Upon application, supported by the defendant's affidavit, the Office of Indigent Defense Services shall determine whether the defendant was previously adjudicated indigent for purposes of trial or direct appeal. If the defendant was previously adjudicated indigent, the

defendant shall be presumed indigent for purposes of this subsection, and the Office of Indigent Defense Services shall appoint two counsel to represent the defendant. If the defendant was not previously adjudicated indigent, the Office of Indigent Defense Services shall request that the superior court in the district where the defendant was indicted determine whether the defendant is indigent. If the court finds that the defendant is indigent, the Office of Indigent Defense Services shall then appoint two counsel to represent the defendant.

(c2) The defendant does not have a right to be present at the time of appointment of counsel, and the appointment need not be made in open court.

(d) The appointment of counsel as provided in subsection (c) of this section and the procedure for compensation shall comply with rules adopted by the Office of Indigent Defense Services.

(e) No counsel appointed pursuant to subsection (c) of this section shall have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made unless the defendant expressly requests continued representation and understandingly waives future allegations of ineffective assistance of counsel.

(e1) When the Supreme Court of North Carolina files an opinion affirming or reversing the judgment of the trial court in a case in which the defendant was sentenced to death, or files an opinion or decision with regard to such a defendant's postconviction petition for relief from a sentence of death, or when any federal court files or issues an opinion or decision in such circumstances, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall, on the day the opinion or decision is filed or issued, permit counsel for the defendant to visit the defendant at the institution at which the defendant is confined. The visit shall be permitted during regular business hours for not less than one hour, unless a visit outside regular business hours is agreed to by both the institution's administrator and counsel for the defendant. This section shall not be construed to abridge the adequate and reasonable opportunity for attorneys to consult with clients sentenced to death generally and shall not be construed to mandate an attorney visit during an emergency at the institution at which a defendant is confined.

(f) A guardian ad litem shall be appointed to represent the best interest of an underage party seeking judicial authorization to marry pursuant to G.S. 51-2A. The appointment and duties of the guardian ad litem shall be governed by G.S. 51-2A. The procedure for compensation of the guardian ad litem shall comply with rules adopted by the Office of Indigent Defense Services. (1969, c. 1013, s. 1; 1973, c. 151, ss. 1, 3; c. 616; c. 726, s. 4; c. 1116, s. 1; c. 1125; c. 1320; c. 1378, s. 2; 1977, c. 711, ss. 7, 8; c. 725, s. 2; 1979, 2nd Sess., c. 1206, s. 3; 1981, c. 966, s. 4; 1983, c. 638, s. 23; c. 864, s. 4; 1985, c. 509, s. 1; c. 589, s. 3; 1987, c. 550, s. 16; 1995, c. 462, s. 3; 1995 (Reg. Sess., 1996), c. 719, s. 7; 1998-202, s. 13(a); 2000-144, s. 6; 2001-62, s. 14; 2002-179, s. 16; 2003-13, s. 2(a); 2005-250, s. 2; 2007-323, s. 14.19(a); 2009-91, s. 1; 2009-387, ss. 3, 5; 2011-145, s. 19.1(h); 2017-176, s. 1(c); 2017-186, s. 2(f).)